

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATE OF AMERICA,	)	
	)	Case No. 17-CR-00104JMS
	)	
Plaintiff,	)	February 15, 2018
	)	10:58 a.m.
vs.	)	
	)	
LEIHINAHINA SULLIVAN,	)	
	)	U.S. District Court
Defendant.	)	300 Ala Moana Boulevard
	)	Honolulu, HI 96850
	)	

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TRANSCRIPT OF MOTION FOR PROTECTIVE ORDER  
BEFORE THE HONORABLE KEVIN S.C. CHANG  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff:	Rebecca Ann Perlmutter, Esq. U.S. Attorney's Office 300 Ala Moana Boulevard, #6100 Honolulu, HI 96850
For Defendant:	William A. Harrison, Esq. Harrison & Matsuoka 1001 Bishop Street, Suite 1180 Honolulu, HI 96813
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1 FEBRUARY 15, 2018 10:58 A.M.

2 THE CLERK: All rise. Please be seated. Court is now  
3 in session. Criminal 17-104JMS, United States of America v.  
4 Defendant (01) Leihinahina Sullivan. This case has been called  
5 for a motion for protective order. Counsel, please make your  
6 appearances for the record.

7 MS. PERLMUTTER: Good morning, Your Honor. Rebecca  
8 Perlmutter for the United States and sitting at counsel table  
9 with me is Special Agent Mark MacPherson from the IRS.

10 THE COURT: Good morning.

11 MR. HARRISON: And good morning, Your Honor. May the  
12 record reflect the presence of Bill Harrison on behalf of Ms.  
13 Sullivan. Your Honor, we would ask that her presence be waived  
14 for this hearing.

15 THE COURT: Yes. I understand that Judge Kobayashi  
16 still has not issued her decision.

17 MR. HARRISON: She has, Your Honor.

18 THE COURT: She has issued her decision?

19 MR. HARRISON: Yes.

20 MS. PERLMUTTER: We just got it. Actually, it was  
21 issued late yesterday under seal.

22 THE COURT: Oh, okay. I have not seen it.

23 MS. PERLMUTTER: No, and we weren't able to get into it  
24 for some reason either, but we got it this morning. I haven't  
25 even -- I skimmed it. I haven't read it fully. There is a

1 violation of conditions, but no detention. So we're going to  
2 have to reset for a hearing about modified conditions, in a  
3 nutshell.

4 MR. HARRISON: That's correct, Your Honor. That's  
5 basically what the Judge did in this case. And so, we were  
6 looking at the 21st, possibly. If possible in the afternoon of  
7 the 21st. I've got hearings in the morning.

8 THE CLERK: Yeah, I'm checking.

9 MR. HARRISON: Okay.

10 THE COURT: Ms. Perlmutter, does that -- the 21st, does  
11 that date work for you?

12 MS. PERLMUTTER: Yes, Your Honor.

13 THE COURT: All right. So we'll continue this hearing  
14 until February 2 -- at what time, Mr. Harrison? In the  
15 afternoon?

16 MR. HARRISON: 1:30, 2:00. Whenever the Court's  
17 available in the afternoon. I just -- the morning is really  
18 full.

19 THE CLERK: 1:30 is -- we're open.

20 MR. HARRISON: Okay.

21 THE COURT: All right. We'll set it for 1:30 on the  
22 21st. That will give me the chance to, at least, review Judge  
23 Kobayashi's order. Okay. Thank you very much. Go ahead.

24 MS. PERLMUTTER: Oh, so, I guess we're here today, Your  
25 Honor, for the protective order. The continuation of the

1 protective order. And I want to start out the tone by saying --  
2 and I hope this is -- I feel pretty optimistic. I think the  
3 parties have made progress, and I think there's a remaining issue  
4 to sort out, but I want to start that way.

5 First is we've discussed -- hopefully, we'll be able to  
6 resolve the protective order in total here today, but that we  
7 want to get discovery to the Defendant. We actually have  
8 prepared -- and Defendant -- Defense counsel has agreed that we  
9 can enter a provisional order subject to resolution of what type  
10 of information can go to the Defendant's hands, copies and so  
11 forth, so that he can get the discovery to start reviewing it, so  
12 that at the resolution of this hearing, hopefully we'll be able  
13 to either enter a full order or some sort of provisional order,  
14 so that we can get the discovery in Defendant's hands.

15 THE COURT: Well, with all due deference to both  
16 counsel, what I would prefer is to see the provisional order  
17 before we have the arguments. I would like to see, in fact, what  
18 it is that you guys are actually able to agree on as opposed to  
19 leaving it open until the end of the hearing for me to decide  
20 what it is. Because, frankly, if you've already got some  
21 agreement on some issues, I would like to know what that is, so  
22 it will further narrow the scope of whatever I have to make the  
23 ruling on.

24 Because if today I issue a ruling, I may actually  
25 contradict or interfere with whatever agreement you may already

1 have.

2 MS. PERLMUTTER: I can outline that, certainly, for  
3 you, Your Honor.

4 If you take a look at the proposed order that the  
5 Government originally submitted --

6 THE COURT: Yes.

7 MS. PERLMUTTER: -- the only -- I think the only  
8 remaining -- and I would like Mr. Harrison to let me know if I'm  
9 misstating our position -- the only remaining issue is who is  
10 responsible for redactions.

11 The proposed order that the Government put before the  
12 Court is that the Defense is responsible for redactions and  
13 should do so subject to compliance with those terms. And that's  
14 still an issue, is how to redact and who should redact, but the  
15 provisional nature on what the parties have agreed on is that  
16 subject to the terms of the proposed protective order that the  
17 Government has submitted, that there's no third-party disclosure,  
18 that the Defense team, including Defense counsel, or anyone  
19 within that team, can review unredacted discovery containing PII,  
20 because not only is it relevant to the defense, but it's  
21 voluminous in nature, and it involves -- it wouldn't be efficient  
22 to redact at the outset, so they can receive that.

23 And that the Defendant can review that unredacted  
24 discovery in the presence of Defense counsel, but cannot retain  
25 copies of unredacted discovery and cannot transcribe PII

1 information. And that's where the parties agree on the  
2 parameters of our agreement.

3           It's just -- and in an effort -- we talked about this  
4 last time. In an effort to come to some sort of reasonable  
5 balanced point, you know, the Government has taken into account  
6 Defendant's arguments and Defense counsel's concerns that he  
7 wants the Defendant to have actual copies of the discovery,  
8 although that's a convenience point, but I understand that. It's  
9 just that those copies of PII information, if she wants to  
10 actually retain herself a copy of certain discovery materials,  
11 should be redacted.

12           So that's the remaining issue, how to redact, and who  
13 should redact, and under what circumstances.

14           THE COURT: Well, Ms. Perlmutter, I do appreciate the  
15 work that you've done, and Mr. Harrison has done, but, for  
16 example, it's not uncommon for a Defendant to retain experts in  
17 the future.

18           If Mr. Harrison were to retain such expert, and to the  
19 extent that those individuals may be within the team, close  
20 quote, do you have any concerns with regards to releasing  
21 unredacted information to those experts, and they haven't been  
22 identified yet?

23           MS. PERLMUTTER: Well, so this is -- this brings me to,  
24 I guess, the second issue that I raised in the supplemental  
25 brief. I did some additional research between the first hearing

1 and now, and there's a case, it's United States v. King. It's a  
2 Northern District of California case that I actually cited. And  
3 I put in a footnote -- and maybe I should have made it more  
4 prominent -- that one of the ideas I come up with to make it less  
5 onerous on Defendant counsel -- and I raised this issue with  
6 Defense counsel -- is in that case -- I actually made copies of  
7 it, because I thought it was really useful to look at -- can I  
8 approach, Your Honor?

9 THE COURT: Yes, uh-huh.

10 MS. PERLMUTTER: In that case if you look to the second  
11 page of the protective order that was issued there, under E, it  
12 actually has the members of the Defense signed on to that  
13 protective order such that they would not disclose that material,  
14 understanding that it's sensitive material.

15 And I actually think that understanding that nature and  
16 having someone on the Defense team such as an expert that, you  
17 know, I trust that Mr. Harrison, if he hired an expert, would  
18 hire a reliable expert with experience, who understands the  
19 nature of their legal obligations and would understand the nature  
20 of a protective order, and non-disclosure. I think that that  
21 person could squarely fall within that Defense team.

22 And if they were to sign on to the protective order  
23 understanding the consequences of disclosure and how to maintain  
24 protected materials, I do think that that would be sufficient to  
25 protect individuals. And this -- we're talking about possibly

1 well over 100 individuals, but individual's concerns about their  
2 own privacy and their rights.

3           So, you know, I don't know specifically how Mr.  
4 Harrison feels with that, but I have flagged this issue, that I  
5 think that this might be a good way to approach the protective  
6 order, rather than some sort of certification on a regular basis  
7 to Your Honor.

8           THE COURT: And it's not an uncommon term in a civil  
9 lawsuit, but this is a criminal context. Mr. Harrison, have you  
10 had a chance to look at this?

11           MR. HARRISON: Your Honor, we didn't get a chance to  
12 talk about this matter. I haven't really looked in detail at  
13 this King case, but, you know, my feeling is this, and I spoke to  
14 Ms. Perlmutter about that. I'm willing to sign off on any  
15 protective order, basically saying that I'm not going to turn  
16 over anything to my client that has any PI information in it.

17           There's a lot of pages here. I don't know what it  
18 looks like because I haven't seen it yet. I have two  
19 alternatives when I get that material. And the two alternatives  
20 that I may have is this. Number one, we are going to require,  
21 maybe, a lengthy trial setting if we both have to sit down and go  
22 over these matters in my presence. The alternative would be to  
23 approach the Court -- I believe the CJA -- this is not a CJA  
24 case, but the CJA has individuals who are -- I read an email  
25 recently that they can provide assistance --



1 THE COURT: Uh-huh.

2 MR. HARRISON: -- in this kind of matter, and maybe I  
3 can have the Court allow me to obtain CJA funds to have these  
4 folks go through this and pull out all the PI information, so  
5 that I can turn the whole matter over to her.

6 What I don't want to have happen here is, later on  
7 having to respond to a 2255 matter because the Defendant did not  
8 see every piece of paper that was presented. And so in an  
9 abundance of caution, I would like to make sure that she sees  
10 everything and there's only two ways to do that. Either we meet,  
11 and we go over everything in my presence, which is going to be a  
12 time consuming, lengthy process if almost every one of these  
13 documents have PI information on it, or to have an order from the  
14 Court allowing me to avail myself of that CJA procedure and  
15 payment.

16 So, in the meantime, I'm willing to take these and not  
17 give her anything with any PI information in it, so that at least  
18 I can begin to assess what kind of damage it's going to require  
19 for me to have her review all the documents.

20 THE COURT: All right. Well, we go back to where we  
21 started the discussion, which is I would like to see the proposed  
22 order. And what you can do, Ms. Perlmutter, is you can submit to  
23 me the most recent proposed form of protective order. If you can  
24 do that within 48 hours. And, Mr. Harrison, if you would like to  
25 submit a competing or red mark order, I'll give you 48 hours

1 after that.

2 MR. HARRISON: That's fine.

3 THE COURT: And then I'll issue whatever -- I'll sign  
4 whichever form --

5 MS. PERLMUTTER: Okay.

6 THE COURT: -- or make whatever modifications I believe  
7 are appropriate. All right. Anything else, Ms. Perlmutter?

8 MS. PERLMUTTER: No, thank you for your time, Your  
9 Honor.

10 THE COURT: Mr. Harrison.

11 MR. HARRISON: No, Your Honor. Thank you.

12 THE COURT: We'll be in recess. Thank you very much.

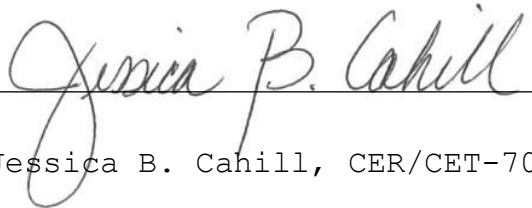
13 THE CLERK: All rise.

14 (Proceedings concluded at 11:10 a.m.)  
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CERTIFICATE

I, Jessica B. Cahill, court approved transcriber, do hereby certify that pursuant to 28 U.S.C. §753, the foregoing is a complete, true, and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated: June 18, 2019

  
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Jessica B. Cahill, CER/CET-708